

Clips used with Jeffrey Yelles

September 18, 2006
JURY TRIAL - DAY FOUR

PG. 134 (Yelles 12/04 @ PG. 18)

03 Q. Are there any dealers in the central
04 region who sell outside their AOR on more than a
05 limited basis?
06 A. I don't think so.

PG.135 (Flaherty 11/03 @ PG. 119)

15 when we broke we were talking
16 about Mack dealers selling outside their area of
17 responsibility. And you testified, sir, I believe,
18 that that was something that you discouraged; is
19 that correct?
20 A. Discourage or did not encourage.
21 Q. Okay.
22 A. Correct.
23 Q. And you gave me some reasons why you did
24 not encourage that. Have you ever attempted to
00120:01 suggest, sir, to a Mack dealer that he should not
02 sell outside his area of responsibility?
03 A. Well, I am sure over the last few years
04 that I have discouraged a number of dealers from
05 selling outside of their territory and taking care
06 of their own.
07 Q. Now, there is nothing in the Mack
08 distributor agreement that prohibits a dealer from
09 selling outside his territory; is there?
10 A. No, there is nothing that prohibits.
11 Q. And Mack does not have any written
12 policies for its dealer that prohibit them from
13 selling outside their territory, does it?
14 A. No.
15 Q. And do you, sir, instruct your regional
16 vice presidents that they should discourage their
17 dealers from selling outside their territories?
18 A. I would say our regional vice presidents
19 have been instructed to or guided that we should not
20 encourage outside the AOR.
21 Q. And they have been instructed and guided
22 by you in that respect?
23 A. I think -- not only I. I think it's been
24 a consistent message over a number of years.
00121:01 Q. Now, there is nothing in the distributor's
02 agreement that gives a dealer an exclusive
03 territory, is there?
04 A. I don't believe there is. I don't think
05 the wording refers to exclusive, no.
06 Q. And there is nothing in the distributor
07 agreement that gives a dealer the right to prevent
08 another dealer from selling in his area of
09 responsibility; is there?
10 A. I pause on that to think that if a -- if a
11 dealer -- if a dealer has a history of selling a
12 large account the regional vice president would
13 probably make some inquiry as to what -- conceivably
14 make some inquiry as to what has brought this about.
15 Q. Okay. My question to you, though, sir was
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16 about the distributor agreement and whether there
 17 was anything in the distributor agreement, to your
 18 knowledge, that gave a dealer the right to keep
 19 other dealers from selling within his territory?

20 A. That is correct. You are correct.

21 Q. There is nothing in the agreement?

22 A. There is nothing in the agreement.

23 Q. And, in fact, the agreement talks about
 24 areas of responsibility, correct?

00122:01 A. Yes. I think it's already in there on
 02 AORs, yes.

03 Q. And if each dealer stayed within his or
 04 her AOR, as you encourage them to do, there would
 05 never be a situation where one Mack dealer was
 06 competing against another Mack dealer for a
 07 particular sale, correct?

08 A. As I stated before, we do not encourage --
 09 we do not encourage that activity. But at the end
 10 of the day if the dealer wants sales assistance, we
 11 will provide the sales assistance.

12 Q. My question to you was, sir, if each
 13 dealer stayed within his area of responsibility and
 14 did not sell outside his area of responsibility,
 15 there would never be a situation where one Mack
 16 dealer was competing against another Mack dealer?

17 A. As you lay it out that way, that would be
 18 correct.

19 Q. Because the areas of responsibility don't
 20 overlap, do they?

21 A. No, they do not overlap.

22 Q. And do you believe, sir, that if each
 23 dealer stayed within his or her area of
 24 responsibility, as you've encouraged them to do, the
 00123:01 dealers would be more profitable?

02 A. Would they be more profitable?
 03 Conceptually we can make a case that they could be
 04 more profitable.

05 Q. And how would you make that conceptual
 06 case?

07 A. Because if the -- if the dealer in that
 08 AOR was taking care of his market place and
 09 encouraging both sales, truck sales, and parts,
 10 service, which is critical to the Mack dealers that
 11 they run on both those -- all three of those areas,
 12 we would have a -- we would have a customer base
 13 that would prefer to do business with Mack -- with
 14 Mack dealers knowing they are getting the support
 15 and the -- so much of the profitability for the
 16 dealer is coming from the parts and service, so he
 17 is taking care of his area of responsibility. There
 18 is -- we would make the case that it would be better
 19 for the dealer.

20 Q. Now, there are situations, are there not,
 21 Mr. Flaherty, where Mack dealers end up competing
 22 against each other for the same business?

23 A. Yes.

24 Q. And in those situations one of the ways
 00124:01 that those dealers competed against each other
 02 frequently is on price, is it not?

03 A. Yes.

04 Q. And if each dealer stayed within his area
 05 of responsibility we wouldn't have that competition
 06 on price, would we?

07 A. Hypothetically, yes.
08 Q. And do you view that as a benefit from
09 staying within your area of responsibility?
10 A. I suppose -- I suppose in a perfect world
11 that could be a case. That's not our business.
12 Q. That's not your business. Because even
13 though you discourage it your dealers are not
14 prohibited from --
15 A. Correct.
16 Q. -- competing against other Mack dealers,
17 correct?
18 A. That is correct.

PG. 146 (Yelles 11/03 @ PG. 92)

12 Q. You can't receive net net billing
13 unless you are selling to a customer in your own
14 AOR?
15 A. Yes.

PG. 164 (Yelles 11/03 @ PG. 370)

01 Q. Did you, in fact, give Mr. Yeager,
02 Toledo Mack, parody or did you equalize Toledo
03 Mack with Hiel or McClain or McNeilus or
04 whichever was the competitor on the deal?
05 Q. Whichever was -- Mr. Yeager
06 indicated was the competitor on the deal?
07 A. No, we would either equalize with
08 the dealer that had an existing discount or we
09 would establish a discount.
10 Q. Whatever discount you established,
11 you would not refer to any discount offered by
12 Mack to any of those three entities when Mack
13 sells trucks to them; correct?
14 Q. You would not make reference to
15 that, correct, in establishing the discount?
16 A. No.

PG. 165 (Yelles 11/03 @ PG. 148)

07 Q. Did you ask anybody to approach
08 Toledo Mack and ask them to adjust their
09 advertising?
10 A. No, I think it's pretty common
11 knowledge, no, I didn't -- but I didn't
12 specifically go to somebody and say -- and voice
13 a complaint, no.

PG. 178 (Yelles 11/03 @ PG. 270)

14 Q. Did you have any understanding as to
15 whether Chicago Mack Sales and Service had been
16 assigned any fleet accounts that would be handled
17 directly by that distributorship?
18 A. The two fleet accounts listed,
19 Transport Service and Bulkmatic.

PG. 182 (Yelles 11/03 @ PG. 288)

17 Q. Were those volume discounts made --
18 were any other dealers, besides Central Indiana
19 and Chicago, made aware of the availability of

20 volume discounts like those offered to Central
21 Indiana and Chicago?
22 A. I can't be sure, but I don't think
23 so. We are talking about approximately 900
24 trucks here.

PG. 191 (Yelles 11/03 @ PG. 309)

13 Q. As part of any program made
14 available by Mack to all Mack dealers, were any
15 other Mack dealers offered established pricing
16 matrix discount levels like those -- equal to
17 those in this letter for the period of time that
18 these discount levels were being offered by Mack
19 in this letter?
20 A. Not that I'm aware of. I don't
21 know.

PG. 195 (Yelles 11/03 @ PG. 88)

22 Q. So is it your belief that a dealer
23 trying to bid on a deal does not need to be
24 equalized with respect to the issue of free floor
00089:01 plan with the other dealer bidding on a deal?
02 A. I don't believe so, no.

PG. 202 (Yelles 11/03 @ PG. 83)

12 Q. On those deals for particular end
13 users where the vocational chassis surcharge was
14 waived in part, how many deals are you aware of
15 where that happened?
16 A. I can't -- I would be guessing to
17 give you a number. I can't give you a number.
18 Q. Was it more than one?
19 A. There again, I would be guessing.
20 Q. Do you remember the dealers
21 involved -- dealer or dealers involved in any
22 deal or deals where that happened?
23 A. I believe the Milwaukee and the Nuss
24 group, two of their customers.
00084:01 Q. Which two customers?
02 A. Putzmeister and Schwing.
03 Q. You said that those -- strike that.
04 So they were two separate
05 deals, correct, the Putzmeister deal and the
06 Schwing deal, at least, correct?
07 A. Yes.
08 Q. And there may have been multiple
09 sales to each end user; correct?
10 A. Yes.
11 Q. Where there was a partial waiver of
12 this vocational chassis surcharge?
13 A. Yes.

September 19, 2006
JURY TRIAL - DAY FIVE

PG. 30 (Gerhard 01/05 @ PG. 103)

16 Q. You mentioned another thing you consider
17 when evaluating a sales assistance request in the
18 specs. What information about specs do you have

19 available to you, when you are evaluating a sales
20 assistance request?

21 A. Okay. I have the ability to see the
22 entire spec of the vehicle, if I elect to do so,
23 everything that is on that truck. Generally
24 speaking, in our system, there is the major
00104:01 components. There is a screen in the system that
02 lets you view the major components between what is
03 called a control number, or you can go back and
04 refer to a general sales order number and find that
05 spec, as well, and compare those major components
06 fairly quickly.

07 If you want to review the entire
08 specification, which is what we'll do when we do a
09 margin analysis, that takes a lot of time.

10 Q. Other than reviewing the entire spec for a
11 margin analysis, do you generally just look at the
12 major component specs, as opposed to looking at the
13 full spec?

14 A. Generally speaking, just the major
15 component specifications.

16 Q. Okay. What information do you have
17 available to you when you review a sales assistance
18 request and you're evaluating it with respect to the
19 competitive environment?

20 A. In the comments that the dealer or the
21 regional field teams put in, there is generally
22 comments about the competitive environment and why
23 they are requesting the discount that they're
24 requesting, in the comments.

00105:01 In addition, in what is known as
02 the F4 screen, it has information as to who the
03 competitors are, the model of the equipment and, in
04 certain instances, they even put a price in there of
05 what the competitor's price is. I have no way of
06 knowing if it's factual or not. But that
07 information is in that screen.

08 Q. How many -- can you evaluate for me,
09 generally speaking, how many instances, during the
10 time you have been director of commercial
11 administration at Mack, you have reviewed a sales
12 assistance request that had an actual specific price
13 for a competitive offer on a deal?

14 Let me put it this way. Is that
15 rare? Is that commonplace? Does that happen every
16 single time?

17 A. It does not happen every single time. I
18 would not say it's rare, but I would not say it's
19 commonplace.

20 Q. Is there a word you would use to quantify
21 it or categorize it? Occasional?

22 A. It's less than commonplace. It's
23 occasionally there, yes. =